SINGLE BENCH

S.R. No. 179/06 H.S. PANDEY
Present ... dated 12/1/06

C.D. 1001

(3)

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IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

WRIT PETITION NO. 172 OF 2006

PETITIONER : Jayram, S/o Shri Duryodhan @ Dukalu, Aged about 38 years, R/o Kasdol, P.S. Tamnar, Tah- Gharghoda, Distt Raigarh (CG).

Versus

RESPONDENTS

1. S. D. O. Revenue (Specified Officer) Gharghoda, Distt Raigarh (CG)
2. Assistant Returning Officer, For the election of Gram Panchyat, Kasdol, Block Tamnar, Tah. – Gharghoda, Distt Raigarh (CG)
3. Rukman, S/o Neelanchal, Aged about 70 years, R/o Kasdol, P.S. Tamnar, Tah- Gharghoda, Distt Raigarh (CG)
4. Tejram, S/o Kalindar, Aged about 45 years, R/o Kasdol, P.S. Tamnar, Tah- Gharghoda, Distt Raigarh (CG)

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WRIT PETITION UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA

(41)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 172 of 2006

Petitioner Jairam

Versus

Respondents S.D.O. Revenue (Specified Officer) Gharghoda & others.

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri B.D. Guru, counsel for the petitioner.

Smt. Anju Ahuja, Deputy Government Advocate with Shri Pankaj Shrivastava, Panel lawyer for the respondents No. 1 and 2/State.

Shri Sunil Sahu, counsel for the respondent No. 3.

None for the respondent No. 4.

ORAL ORDER

(8th March, 2006)

1. The present writ petition filed under Article 226/227 of the Constitution of India, impugns the order dated 2.1.2006 (Annexure P-1) passed by the respondent No. 1.

2. The petitioner has challenged the order on the ground that out of 80 ballot papers, 63 ballot papers were counted, which were used for casting votes.

3. Learned counsel for the petitioner submits that unused ballot papers were not counted and as such it creates doubts as to whether the ballot papers were properly used or not. The Specified Officer/respondent No. 1, in his order dated 2.1.2006, has recorded that out of total 80 ballot papers, 63 ballot papers were used for casting votes in Ward No. 9 of the Gram Panchayat, Kashdol and 17 ballot papers were unused. On that basis, the Specified Officer, came to the conclusion that the petitioner Jairam and Rukman (respondent No. 3) have obtained equal votes and the result be declared by lot as provided under Rule 24 of the Madhya Pradesh

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Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995.

4. By order dated 17.1.2006, the respondent No. 1 and 2 were directed to keep unused ballots ready for inspection of the Court.

5. On 6.3.2006, the respondents No. 1 and 2 produced used as well as unused ballot papers in regard to Ward No. 9 of the Gram Panchayat, Kasdol in panch election held on 15.1.2005. The Registrar (Judicial) was directed by order dated 6.3.2006 to recount all the ballot papers used for the purpose of casting votes as well as unused ballot papers of Ward No. 9 of the Gram Panchayat, Kasdol in presence of the counsel for the parties and officers.

6. The Registrar (Judicial) has recounted the ballot papers as produced by the respondents No. 1 and 2 in sealed covers on 6.3.2006 at 5 o'clock in the evening in presence of the counsel for the parties and the respondents No. 1 and 2 officers. The reports reads as under :-

> "Unused ballot papers were counted. On counting of unused ballot papers, it came to 16 only.
>
> Packet of used ballot papers in sealed packet was opened and counted. On counting the used ballot papers, it was found that 32 ballot papers in a bundle marked with the seal prescribed for voting against the name of Rukhman were counted. Only 31 ballot papers were marked by the seal prescribed for voting. 1 ballot paper was unmarked.
>
> Another bundle containing 31 ballot papers marked with the seal prescribed for voting against the name of Jayram were counted. All the 31 ballot papers found to have been marked with the paper seal prescribed for voting.
>
> Thus, total number of ballot papers used and unused were 79 in number.

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Used ballot papers sealed in separate envelope, unused ballot papers sealed in separate envelope and all other papers relating to Panch Election of Gram Panchayat Kasdol, sealed in one envelope, are kept in safe custody"

The Registrar (Judicial) submitted his report on 7.3.2006, in view of the report submitted by the Registrar (Judicial), it appears that the order dated 2.1.2006 (Annexure P-1) passed by the respondent No. 1 is not on the basis of actual recounting, but on conjecture and guess work.

7. For the reasons stated above, the impugned order dated 2.1.2006 (Annexure P-1) is quashed. The matter is remitted back to the respondent No. 1 along with a copy of the report submitted by the Registrar (Judicial) dated 7.3.2006 for considering the dispute in accordance with law and decide the same within a period of two weeks from the date of receipt/production of a copy of this order.

8. The respondents No. 1 and 2 may collect the ballot papers, which were produced in sealed covers, from the Registrar (Judicial).

9. The writ petition is accordingly allowed. No order as to costs.

Sd/-
S.K. Agnihotri
Judge

Bablu